

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

**IN RE: NATIONAL PRESCRIPTION
OPIATE LITIGATION**

MDL No. 2804

This document relates to:
*The County of Summit, Ohio, et al. v. Purdue
Pharma L.P., et al.*
Case No. 18-op-45090

Hon. Dan Aaron Polster

**NOTICE RELATING TO THE COURT'S ORDER
REGARDING OBJECTIONS TO REPORT AND RECOMMENDATION**

Defendants AmerisourceBergen Drug Corporation, Cardinal Health, Inc., and McKesson Corporation (“Distributors”) hereby file this notice relating to the Court’s Order Regarding Objections to Report and Recommendation (Dkt. 1032) in order to preserve their objection to the Court’s requirement that they file a consolidated Objection limited to 15 pages. Distributors acknowledge the Order’s statement that “[n]o motions for relief from the length restrictions will be considered” but, absent this notice, there will be no appellate record sufficient to preserve (i) that Distributors had communicated to Special Master Cohen their request to file a consolidated 50-page Objection before the Court announced at the October 10, 2018 status conference that it would shorten the limits allowed by the Local Rules, and (ii) Distributors’ objection to a page limitation less than that allowed by the Local Rules. As set forth below, the Court’s ruling so constrains Distributors’ ability to present their defenses and protect their interests as to violate principles of fundamental fairness and places them at risk of non-compliance with Sixth Circuit rules requiring that objections to reports and recommendations be specific and complete in order to avoid waiver.

Plaintiffs filed an 11-count, 1137-paragraph complaint against 20 different Defendants. The R&R is 103 pages long and recommends against dismissal of every claim asserted against Distributors but one. The R&R fails to consider Distributor-specific arguments and repeatedly and erroneously relies on arguments and allegations that relate only to the Manufacturer Defendants. Under the Local Rules, each defendant is presumptively entitled to file a 30-page Objection. L.R. 7.1(f). On October 9, in the interests of judicial economy, Distributors proposed to Special Master Cohen that they file a consolidated Objection of 50 pages. On October 11, without the opportunity for briefing, the Court ordered Distributors to file a single Objection limited to 15 pages.

Under Sixth Circuit precedent, “the failure to file *specific* objections to a magistrate’s report constitutes a waiver of those objections.” *Carter v. Mitchell*, 829 F.3d 455, 472 (6th Cir. 2016) (emphasis added); *see also Cowherd v. Million*, 380 F.3d 909, 912 (6th Cir. 2004) (en banc) (holding that the incorporation of arguments by reference in objections is “disfavor[ed]”). As a corollary to this rule, “only those specific objections to the magistrate’s report made to the district court will be preserved for appellate review.” *Kelly v. Withrow*, 25 F.3d 363, 366 (6th Cir. 1994); *accord McClanahan v. Comm’r of Soc. Sec.*, 474 F.3d 830, 837 (6th Cir. 2006) (“This court cannot entertain an objection to a magistrate judge’s report and recommendation that was not previously raised.”).

Curtailling Distributors’ ability meaningfully to present each of their specific objections by imposing restrictive page limits will frustrate the Court’s ability to undertake the required *de novo* review of the R&R and makes it extremely difficult for Distributors fully to protect their appellate rights.

Dated: October 12, 2018

Respectfully submitted,

/s/ Robert A. Nicholas

Robert A. Nicholas
Shannon E. McClure
REED SMITH LLP
Three Logan Square
1717 Arch Street, Suite 3100
Philadelphia, PA 19103
Tel: (215) 851-8100
Fax: (215) 851-1420
rnickolas@reedsmith.com
smcclure@reedsmith.com

*Counsel for AmerisourceBergen Corporation
and AmerisourceBergen Drug Corporation*

/s/ Geoffrey E. Hobart

Geoffrey E. Hobart
Mark H. Lynch
Christian J. Pistilli
COVINGTON & BURLING LLP
One CityCenter
850 Tenth Street NW
Washington, DC 20001
Tel: (202) 662-5281
ghobart@cov.com
mlynch@cov.com
cpistilli@cov.com

Counsel for McKesson Corporation

/s/ Enu Mainigi

Enu Mainigi
F. Lane Heard III
Steven M. Pyser
Ashley W. Hardin
WILLIAMS & CONNOLLY LLP
725 Twelfth Street, N.W.
Washington, DC 20005
Tel: (202) 434-5000
Fax: (202) 434-5029
EMainigi@wc.com
lheard@wc.com
spyser@wc.com
ahardin@wc.com
Counsel for Cardinal Health, Inc.

CERTIFICATE OF SERVICE

I, Geoffrey E. Hobart, hereby certify that the foregoing document was served via the Court's ECF system to all counsel of record.

/s/ Geoffrey E. Hobart
Geoffrey E. Hobart